

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 535 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KISHAN DHARAMDAS

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR KB ANANDJIWALA for Respondent No. 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/11/1999

ORAL JUDGEMENT

#. Heard learned counsel Mr.B.S.Patel, appearing for the petitioner and Mr.B.Y.Mankad, learned APP for respondent No.1 State and Mr.Anandjiwala, learned counsel appearing for the rest of the respondents - original accused of criminal complaint lodged by the present petitioner in the Court of learned JMFC, 1st Court, Vadodara.

#. Rule. Mr.B.Y.Mankad, learned APP appearing for respondent No.1 - State and Mr.Anandjiwala, learned counsel appearing for respondents No.2 to 7 waive service of rule. With consent of the learned counsels appearing for the parties, this revision application is taken up for final hearing today.

#. Heard Mr.B.S. Patel, learned counsel for the petitioner. The submission of Mr.B.S.Patel shall have to have accepted that the original complainant was not heard when the learned Additional Sessions Judge decided the application and passed the impugned order. Having gone through the papers produced on record, it seems that the revision before the learned Addl. Sessions Judge had committed an error in not joining the original complainant as one of the opponents in the revision application. This is the case of private complaint and the petitioner - original complainant ought to have given an opportunity of being heard because the effect of the order passed by the learned Additional Sessions Judge terminates the entire proceedings initiated by the present petitioner. The principles of natural justice has been violated so, the matter shall have to be remanded back to the learned Additional Sessions Judge. Mr.Anandjiwala, learned counsel appearing for the original accused has submitted on certain technical aspects but the same arguments can be advanced before the learned Additional Sessions Judge as and when he rehears the revision application in presence of the present petitioner. The learned Addl. Sessions Judge should issue notice to the present petitioner being original complainant of the Inquiry Case and after hearing him and the learned APP on merits, should decide the revision application afresh.

#. Mr.Mankad, learned APP appearing for the respondent No.1 - State also submits that the learned Addl. Sessions Judge is directed to hear and decide the revision application within stipulated period of time and same should be just and proper in the interest of justice. Mr.Patel also undertakes that the petitioner will appear before the learned Addl. Sessions Judge and will cooperate in the hearing.

#. The revision application is therefore allowed. The impugned order passed by the learned Sessions Judge allowing the revision application dated 22nd May, 1999 is quashed and set aside. The revision is remanded back to the learned Addl. Sessions Judge and he is directed to rehear the revision application afresh after serving the notice to the present petitioner - original complainant.

The learned Addl Sessions Judge shall pass the appropriate order without being influenced of the order passed earlier strictly on merits after hearing all the respective parties including the State. Rule is made absolute accordingly.

Date : 1-11-1999 [C.K.Buch, J.]

#kailash#